



IT IS ORDERED as set forth below:

Date: February 13, 2024

**Sage M. Sigler
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In Re:	CASE NUMBER:
RA CUSTOM DESIGN, INC.,	23-58494-SMS
Debtor.	CHAPTER 11 SUBCHAPTER V
PRIMARY INVESTMENTS GROUP, INC.,	
Plaintiff,	ADVERSARY PROCEEDING NUMBER:
v.	23-05193-SMS
RA CUSTOM DESIGN, INC.,	
Defendant.	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

Exceptions to discharge under § 523(a) of the Bankruptcy Code do not apply to corporate debtors under subchapter V of chapter 11. The Court will therefore dismiss with prejudice Plaintiff's complaint against Defendant alleging fraud, embezzlement, and willful and malicious

injury, and seeking that its debt be determined nondischargeable.

JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (I). Venue is proper under 28 U.S.C. § 1409.

BACKGROUND

RA Custom Design, Inc. (“Defendant”) filed a voluntary chapter 11 petition under subchapter V on September 1, 2023 (the “Petition Date”), commencing Bankruptcy Case No. 23-58494 (the “Bankruptcy Case”). On November 27, 2023, Primary Investments Group, Inc., (“Plaintiff”) initiated the above-styled adversary proceeding by filing the three-count *Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4) and 523(a)(6)* (the “Complaint,” Doc. 1).

On December 28, 2023, Defendant timely filed the *Defendant’s Motion to Dismiss Adversary Complaint with Prejudice* (the “Motion to Dismiss,” Doc. 4) and the *Defendant’s Brief in Support of Motion to Dismiss Adversary Complaint with Prejudice* (the “Supporting Brief,” Doc. 5). Plaintiff did not file a response to the Motion to Dismiss and is therefore deemed not to oppose dismissal. *See* BLR 7007-1(c).

ANALYSIS

A complaint may be dismissed for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6), made applicable by Fed. R. Bankr. P. 7012. Dismissal is appropriate unless Plaintiff provides “enough facts to state a claim for relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007). This plausibility standard “requires that the pleader show more than a sheer possibility of success.” *Ashcroft v. Iqbal*, 556

U.S. 662 (2009). “In reviewing the complaint, we accept all factual allegations as true and construe them in the light most favorable to the plaintiff.” *Maps v. Miami Dade State Attorney*, 693 Fed. Appx. 784, 785 (11th Cir. 2017). “[I]f as a matter of law, it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations, a claim must be dismissed.” *Dragash v. Saucier*, 17-12031-JJ, 2017 WL 5202252, at *1 (11th Cir. Sept. 26, 2017) (internal quotations and citations omitted).

In the Complaint, Plaintiff seeks a determination that its debt is not dischargeable pursuant to various subsections of § 523(a). In the Supporting Brief, Defendant argues that the § 523(a) exceptions to discharge do not apply to Defendant as a matter of law because it is not an individual. Plaintiff offered no counterargument but agrees that Defendant is a corporation. *See* Complaint, ¶ 3.

Discharges in cases under subchapter V of chapter 11 follow confirmation of a plan.¹ If the plan meets all but one of the requirements of § 1129(a),² the court will confirm the plan on a “consensual” basis, and the debtor will be discharged pursuant to § 1141(d).³ *See* 11 U.S.C. § 1191(a). If the plan does not meet certain requirements,⁴ then the plan can still be confirmed by “cramdown” if the court determines that the plan is fair and equitable and does not discriminate unfairly. 11 U.S.C. § 1191(b). Debtors that confirm cramdown plans receive a discharge under § 1192 only after they complete all payments due under the first three to five years of the plan, but do not receive a discharge of debts “of the kind specified in [§] 523(a).” 11 U.S.C. § 1192.

¹ Defendant has not confirmed a plan. *See* Bankruptcy Case docket, *generally*. Defendant filed a proposed plan on November 30, 2023 (Bankruptcy Case, Doc. 36). A hearing to confirm the plan is scheduled for February 28, 2024 (Bankruptcy Case, Doc. 57).

² A plan need not meet the requirement of § 1129(a)(15) to be confirmed under § 1191(a).

³ Section 1141(d)(5) exceptions to discharge for individuals do not apply to any subchapter V discharge. 11 U.S.C. § 1181(c).

⁴ Specifically, paragraphs (8), (10), and (15) of § 1129(a).

Section 523(a) exceptions to discharge apply to individuals receiving a discharge under § 1141(d) but not to corporate entities. 11 U.S.C. § 1141(d)(2). Accordingly, corporate entities that receive a discharge after consensual plan confirmation are not subject to the exceptions to discharge listed in § 523(a). The question presented here is whether § 523(a) applies to corporate entities that receive discharges after confirming a cramdown plan under § 1192. Specifically, whether § 1192(2) excepts debts “of the kind specified in [§] 523(a)” from the discharge of corporate entities notwithstanding the clear disqualification within § 523(a) that “a discharge under section . . . 1192 . . . does not discharge an *individual* debtor. . .” from the debts listed in § 523(a) (emphasis added). Stated otherwise, the inquiry is whether § 1192 changes the well settled principle that “[a] corporate debtor is not an individual debtor for the purposes of [§] 523.” *In re Spring Valley Farms, Inc.*, 863 F.2d 832, 834 (11th Cir. 1989).

The Ninth Circuit Bankruptcy Appellate Panel and several bankruptcy courts have reached the conclusion that § 1192 does not make § 523(a) applicable to corporate entities.⁵ The notable outlier is the Fourth Circuit Court of Appeals, which reversed a bankruptcy court to decide that § 1192 makes § 523(a) applicable to corporate entities.⁶ Neither the Eleventh Circuit nor the Supreme Court has ruled on the matter.

This Court agrees with fellow bankruptcy courts and the Ninth Circuit Bankruptcy Appellate Panel that § 1192 does not make § 523(a) exceptions to discharge applicable to corporate

⁵ See *In re Off-Spec Sols., LLC*, 651 B.R. 862 (B.A.P. 9th Cir. 2023), *appeal dismissed*, 23-60034, 2023 WL 9291577 (9th Cir. Nov. 2, 2023); *Catt v. Rtech Fabrications, LLC (In re Rtech Fabrications LLC)*, 635 B.R. 559 (Bankr. D. Idaho 2021); *Cantwell-Cleary Co., Inc., v. Cleary Packaging (In re Cleary Packaging, LLC)*, 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd* 36 F.4th 509 (4th Cir. 2022); *Gaske v. Satellite Rest., Inc. Crabcake Factory USA (In re Satellite Rest., Inc. Crabcake Factory USA)*, 626 B.R. 871 (Bankr. D. Md. 2021); *Avion Funding, LLC v. GFS Industries, LLC (In re GFS Industries, LLC)*, Case No. 22-05052, 2022 WL 16858009 (Bankr. W.D. Tex. Nov. 10, 2022); *Jennings v. Lapeer Aviation, Inc. (In re LaPeer Aviation, Inc.)*, Adv. No. 22-03002, 2022 WL 1110072 (Bankr. E.D. Mich. Apr. 13, 2022).

⁶ See *In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022).

entities. While the Court appreciates the Fourth Circuit's analysis of the plain language of § 1192, the Court agrees with a notable commentator that the 4th Circuit's conclusion does not necessarily follow from the language of § 1192.⁷ Moreover, the Court does not read § 1192(2)'s reference to § 523(a) to eliminate the restriction inherent in § 523(a) that it only applies to individuals.

CONCLUSION

Having reviewed and considered the relevant statutes, published decisions on the matter, and commentator analysis, the Court concludes that § 523(a) does not apply to corporate entities in subchapter V even if the corporate entity confirms a cramdown plan under § 1192. Because Defendant is a corporate entity and not an individual, Plaintiff cannot state a plausible claim for relief under § 523(a), and the Complaint must be dismissed. Accordingly, it is

ORDERED that the Motion to Dismiss is **GRANTED**. The Complaint is **DISMISSED with prejudice** on all Counts.

The Court Clerk is directed to serve a copy of this Order on Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's counsel.

END OF DOCUMENT

⁷ See Judge Paul W. Bonapfel's thorough analysis of the Fourth Circuit's statutory interpretation in *Do § 523(a) Exceptions to Discharge Apply to The Discharge of a Corporation in a Subchapter V Case After "Cramdown" Confirmation Under § 1191(b)?*, 32 No. 4 J. Bankr. L. & Prac. NL Art. 1. See also Hon. Paul W. Bonapfel, *Guide to the Small Business Reorganization Act of 2019*, revised June 2022, pp. 207-238, available at https://www.ganb.uscourts.gov/sites/default/files/sbra_guide_pwb.pdf.